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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

PIRUZ VARGHA, Plaintiff and Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA et al., Defendants and Respondents.	A131779 (San Francisco County Super. Ct. No. CGC0941720)

Pro per appellant Piruz Vargha sued respondents the Regents of the University of California (the Regents) and four individuals after he was terminated during a probationary period at the University of California, San Francisco (UCSF). He alleged that respondents retaliated against him for reporting safety concerns. The trial court granted respondents' motion for summary judgment. Appellant argues that the trial court erred when it granted the motion, as well as when it denied his peremptory challenge of the trial judge pursuant to Code of Civil Procedure section 170.6. We affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

"We accept as true the following facts and reasonable inferences supported by the parties' undisputed evidence on the motion for summary judgment. [Citation.]" (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 335.)

Appellant began working as a safety specialist for UCSF in November 2005. He was required to work for a six-month probationary period, during which he could be

terminated at any time at the discretion of the university, pursuant to UCSF policy. Appellant's job duties included monitoring the use of radioactive materials and radiation producing equipment, auditing laboratories and nuclear medicine and radiation oncology departments, and conducting radiation safety training. His position required him to help medical staff administer unsealed radioactive materials, which involved meeting with patients and family members to discuss exposure levels. Respondent William Lew was appellant's supervisor.

Concerns about appellant's performance began to surface within weeks of his starting to work at UCSF. He wore protective gear in inappropriate places (which concerned Lew and other coworkers), he became defensive when asked to stop wearing the gear outside controlled areas, and he refused to participate in staff meetings and to attend other work-related events. Although Lew tried to address these issues with appellant, appellant's "eccentric behavior" persisted, such as when Lew asked appellant to watch a training regarding breathing equipment to be worn in emergencies, and appellant refused.

In his declaration submitted in opposition to respondents' summary judgment motion, appellant explained some of the behavior that respondents considered "peculiar," claiming that he wore sterile gloves outside of protected areas because he used them "as bandages" to prevent infection after suffering cuts while working with animals. He acknowledged that when Lew confronted him about wearing the gloves, he asked who had complained, and told Lew to tell the employee to ask appellant directly about it. He denied refusing to participate in staff meetings and work-related events, but acknowledged that he did not attend two required meetings, because the meeting rooms were "overflowing," and it was "not possible to get in." He also acknowledged at his deposition that he left a staff meeting on February 7, 2006, after standing outside the room for 10 minutes, because the meeting was about zebra fish, and he "had more pressing work to do than listen to somebody who did interesting research on fish." Appellant also provided an explanation for why he refused to have Lew train him in the use of breathing equipment. Appellant claimed that in late February 2006, he was in

Lew's office when "a woman with a clipboard" interrupted them to ask that people who were "on a list" of those who had been trained in the equipment to perform "some kind of a test." Appellant was not on the list, but Lew offered to train him on how to use the equipment. Appellant did not feel it was appropriate to conduct training at that time, left the room while Lew was using the equipment at issue, and explained to Lew later that he "had not understood what he [Lew] was doing and why he was doing it." He also told Lew that "it was not as if I urgently needed or wanted to wear" the breathing equipment anyway.

According to Lew, he "never perceived anything [appellant] discussed with me as complaining about anything unlawful or outside the scope of [his] employment." In appellant's declaration, appellant recounted in detail all the unsafe things he witnessed Lew do, as well as unsafe tasks Lew asked appellant to perform. Appellant declared that he considered the safety violations he witnessed to be "amazing" and "strange[]," and that some of the things he witnessed "confirmed [his] worst fears" about employees' exposure to various hazards. He stated that he asked Lew questions about various practices that appellant felt were being done "incorrect[ly]" or in an "illogical" manner, but that Lew became defensive and dismissive.

Appellant met twice with respondent Robert Eaton, the director of UCSF's department of environmental health and safety, on December 21 and 22, 2005. Appellant raised concerns related to radiation safety, lack of training for technicians, and Lew's management style. According to appellant, he repeatedly told Eaton that he did not want to risk losing his job for sharing information about safety concerns, and Eaton told him that UCSF had a whistleblower protection policy, and that appellant could not be fired for raising safety issues. After their meetings, Eaton sent appellant an e-mail summarizing their discussions. Appellant responded to the e-mail, provided some clarifications, and thanked Eaton for his interest in appellant's opinion. In his declaration, appellant claimed that Eaton's e-mail following their meetings was part of a "cover up" that "had been set in motion." Appellant testified at his deposition that he did not discuss or share the e-mail exchange with anyone, that he did not recall telling anyone at UCSF about his

two meetings with Eaton, and that he did not know one way or the other whether Eaton told anyone about their meetings. He also testified that although Eaton seemed "very worried" about the issues they discussed, he did not appear angry or upset with appellant for raising safety concerns.

A human resources analyst informed supervisor Lew on February 3, 2006, that Lew needed to conduct a mid-point evaluation of appellant, as part of appellant's probationary period assessment. Lew asked for feedback from respondent Keith Cudaback, a safety specialist who shared office space with appellant, and who had no authority to terminate or discipline appellant. Cudaback told Lew that appellant seemed to have an argumentative attitude, and had "openly expressed his fundamental opposition to the type of work" that UCSF performed. Appellant had told Cudaback that UCSF doctors were " 'putting money and research prestige ahead of patient and staff safety.' " Appellant also had referred to a pediatric oncology patient as a " 'cry baby,' " a remark that appellant confirmed that he had made during his deposition. Cudaback felt that this was an inappropriate comment that demonstrated a lack of compassion. Other medical staff raised concerns that appellant "seemed 'defensive,' 'weird,' and had 'poor people skills.' " This feedback was consistent with Lew's impression of appellant.

Lew met with the chief administrative officer of UCSF's office of research on February 22, 2006, to review appellant's mid-point evaluation. The two agreed that appellant did not seem well suited for the position. They never discussed any safety concerns that appellant had raised during his employment.

Two days later, on February 24, 2006, appellant forwarded the e-mail exchange that he and Eaton had had regarding their meetings the previous December back to Eaton. According to appellant, Eaton had requested a copy of the exchange, stating that he had lost it. Appellant further declared that Eaton had explained that an irradiator appellant had identified as having problems had been repaired, and technicians had been trained (a contention that appellant disputed), so Eaton "wanted to close out the issue." Less than 10 minutes after appellant forwarded the original exchange, Eaton replied to appellant, stating, "Thanks for forwarding this back to me and thank you for originally bringing

these issues to my attention. Please let me [know] if there are currently specific safety concerns that you have with our Radiation Safety Program."

Lew notified appellant on March 3, 2006, that Lew was releasing him from his employment. According to both Lew and Eaton, Eaton played no role in the decision to initiate appellant's mid-point evaluation, did not participate in the evaluation, did not initiate his termination, and did not provide any "meaningful input" into the decision to terminate him, other than approving Lew's decision to do so.

Respondent Aramaies Tahmassian, who served as associate vice chancellor of research at UCSF during appellant's brief employment at the university, played no role whatsoever in appellant's mid-point evaluation, and was not aware that Lew was going to fire appellant until after Lew already had made the decision to do so. Appellant testified during his deposition that he met Tahmassian on two occasions, but they did not have any substantive discussions.

In March 2007, appellant addressed an internal whistleblower retaliation complaint to a UCSF associate vice chancellor. Following a fact-finding investigation, UCSF rejected the complaint, after concluding that appellant was not terminated based on retaliation.

Appellant, proceeding without an attorney, sued respondents Regents, Lew, Eaton, Tahmassian, and Cudaback for wrongful termination. An amended complaint alleged causes of action for wrongful termination in violation of (1) Health and Safety Code section 1278.5 (whistleblower protections), (2) Labor Code section 1102.5,

subdivision (b) (employer retaliation), and (3) Government Code section 8547 et sequitur (California Whistleblower Protection Act).[1]

Respondents filed a motion for summary judgment, or in the alternative, summary adjudication, which appellant opposed. Following a hearing, the trial court granted respondents' motion. It concluded that (1) there was no triable issue of fact regarding whether appellant was engaged in a protected activity, (2) there was no triable issue of fact regarding whether appellant's termination "resulted from retaliatory animus," because the evidence was clear that "his termination was based solely on legitimate performance issues and that there is no evidence that these reasons were pretextual," (3) the claims against respondents Cudaback, Tahmassian, and Eaton failed because there was no evidence that any of them was involved in the decision to terminate appellant, and (4) respondent Regents was immune from liability pursuant to *Palmer v. Regents of University of California* (2003) 107 Cal.App.4th 899, 909.

Appellant, still proceeding without an attorney, appealed from the order granting summary judgment. An appeal can be taken following an order granting summary judgment only after the court enters a judgment, which had not happened before appellant filed his notice of appeal on April 8, 2011. (*Swain v. California Casualty Ins. Co.* (2002) 99 Cal.App.4th 1, 6.) On its own motion, this court takes judicial notice of a judgment filed in the trial court on May 13, 2011, which is available on the trial court's website. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) We construe the trial court's order granting summary judgment as an announcement of its intended ruling, and treat

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[1] All three statutes prohibit retaliation for making protected disclosures. Health and Safety Code section 1278.5, subdivision (b)(1) provides that no health facility shall retaliate against any employee because the person has reported to the facility suspected unsafe patient care and conditions. Labor Code section 1102.5, subdivision (b) provides that an employer may not retaliate against an employee for disclosing information that the employee believes discloses a violation of state or federal statutes, rules, or regulations. The California Whistleblower Protection Act provides that any person who retaliates against a University of California employee for disclosing conditions that may threaten the health or safety of the public shall be liable for damages to the injured party. (Gov. Code, §§ 8547.2, subd. (e) & (f), 8547.10, subd. (c).)

appellant's notice of appeal as being filed immediately after entry of judgment. (Cal. Rules of Court, rule 8.104(d).)

II.
DISCUSSION

A. Summary Judgment.

1. Standard of review

" ' "This court reviews de novo the trial court's decision to grant summary judgment and we are not bound by the trial court's stated reasons or rationales. [Citation.]" [Citation.]' " (*Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 67 (*Morgan*) [affirming grant of summary judgment in retaliation lawsuit].)

2. No triable issue of material fact

Appellant argues that the trial court erred in granting summary judgment on his claims that he was terminated in retaliation for reporting safety violations. " ' "To establish a prima facie case of retaliation, a plaintiff must show that she engaged in protected activity, that she was thereafter subjected to adverse employment action by her employer, and there was a causal link between the two." ' [Citation.]" (*Morgan*, *supra*, 88 Cal.App.4th at p. 69.) "If the employee establishes a prima facie case, the employer is required to offer a legitimate, nondiscriminatory reason for the adverse employment action. [Citation.] The employer's burden at this stage is to go forward with additional evidence; it does not take on a burden of persuasion. [Citations.] If the employer produces substantial evidence of a legitimate, nondiscriminatory reason for the adverse employment action, the presumption of discrimination created by the prima facie case ' "simply drops out of the picture" ' [citation] and the burden shifts back to the employee to prove intentional discrimination. [Citations.] '[T]he plaintiff may establish pretext "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." ' [Citations.] Circumstantial evidence of ' "pretense" must be "specific" and "substantial" in order to create a triable issue with

respect to whether the employer intended to discriminate' on an improper basis. [Citations.] With direct evidence of pretext, ' "a triable issue as to the actual motivation of the employer is created even if the evidence is not substantial." [Citation.] The plaintiff is required to produce "very little" direct evidence of the employer's discriminatory intent to move past summary judgment.' [Citation.]" (*Id.* at pp. 68-69.)

There is no dispute that appellant suffered an adverse employment action when he was terminated from UCSF. Respondents argued below that appellant did not engage in protected activity, because he was making disclosures as part of his regular job duties, and the trial court agreed. On appeal, appellant recites at length the various complaints he made regarding practices at UCSF that he believed were violating state and federal safety laws and regulations, and focuses in particular on the potential dire consequences if UCSF does not remedy the alleged violations of which he complained. Respondents now apparently concede, at least for purposes of appellant's Labor Code claim, that recent caselaw establishes that information provided to a supervisor in the normal course of an employee's duties may amount to an actionable protected disclosure, and do not further address this issue. (*Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 856-858.) We thus assume, for purposes of this appeal, that appellant was engaged in protected activity when he complained about safety issues to respondent Eaton.

The trial court additionally concluded that there was no triable issue of material fact as to whether appellant's termination "resulted from retaliatory animus," that is, whether there was a causal link between his protected activity and his termination. (*Morgan, supra,* 88 Cal.App.4th at p. 69, fn. omitted.) Such a causal link between a plaintiff's protected activity and an adverse employment action is required by each of the three statutes under which appellant sued. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384 [Lab. Code, § 1102.5, subd. (b) cause of action]; *Jadwin v. County of Kern* (E.D.Cal. 2009) 610 F.Supp.2d 1129, 1144 [Health & Saf. Code, § 1278.5 cause of action]; Gov. Code, § 8547.10, subd. (d) [California Whistleblower Protection Act not intended to prevent manager from taking personnel

action against University of California employee if manager reasonably believes that action was justified based on evidence separate and apart from protected disclosure].)

Respondents provided substantial evidence in support of its summary judgment motion that appellant was terminated for reasons unrelated to his complaints about safety concerns. (*Morgan, supra,* 88 Cal.App.4th at p. 68.) Appellant's coworkers and his supervisor reported concerns that he wore protective gear in inappropriate locations, that he was insensitive about a cancer patient with whom he had interacted, and that they considered him to be eccentric and defensive, having poor people skills. Even assuming arguendo that appellant established a prima facie case of retaliation, or that there was a rebuttable presumption that discriminatory action was taken against appellant given the timing of his termination (Health & Saf. Code, § 1278.5, subd. (d)(1)),[2] the presumption of discrimination " ' "simply drop[ped] out of the picture" ' " when respondents provided this substantial evidence of legitimate, nondiscriminatory reasons for his termination. (*Morgan* at p. 68.) Appellant thereafter provided no direct evidence that the reasons given for his termination were pretextual. (*Id.* at pp. 68-69.) He likewise provided insufficient circumstantial evidence of pretext; that is, evidence that was sufficiently " ' "specific" ' " and " ' "substantial" ' " to show that respondents were more likely motivated by a discriminatory reason. (*Id.* at p. 69.)

Appellant devotes much of his appellate briefing to explaining why all the reasons given for terminating him were illogical, weak, or lacked merit, and why he was in fact a

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2 Health and Safety Code section 1278.5, subdivision (d)(1) provides: "There shall be a rebuttable presumption that discriminatory action was taken by the health facility, or by the entity that owns or operates that health facility, or that owns or operates any other health facility, in retaliation against an employee, member of the medical staff, or any other health care worker of the facility, if responsible staff at the facility or the entity that owns or operates the facility had knowledge of the actions, participation, or cooperation of the person responsible for any acts described in paragraph (1) of subdivision (b) [which includes presenting a report to the facility regarding suspected unsafe conditions], and the discriminatory action occurs within 120 days of the filing of the grievance or complaint by the employee, member of the medical staff or any other health care worker of the facility." As appellant points out, there were fewer than 120 days between when he reported safety concerns to Eaton and when he was terminated.

good employee. To avoid summary judgment where an employer has provided a legitimate, nondiscriminatory reason for an employment decision, an employee "can not 'simply show the employer's decision was wrong, mistaken, or unwise. Rather, the employee " 'must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them "unworthy of credence," [citation], and hence infer "that the employer did not act for the [. . . asserted] non-discriminatory reasons." [Citations.]' [Citations.]" [Citation.]' [Citation.]" (*Morgan, supra,* 88 Cal.App.4th at p. 75, original italics.)

Even if we accept appellant's argument that his employer was unwise in terminating his employment, he has demonstrated no weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the reasons for firing him that justified going to trial on his retaliation claim. (*Morgan, supra,* 88 Cal.App.4th at p. 75.) In fact, many of his arguments, such as the one that respondent Cudaback "misrepresented" facts when he provided feedback about appellant's performance, are unsupported by any citation to the record, and we may therefore treat them as waived. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

We also reject appellant's argument that there were triable issues of fact because respondents somehow failed to comply with portions of the University of California's personnel policies, of which this court took judicial notice, along with the university's whistleblower protection policy. Even though this court has taken judicial notice of the relevant policies, we need not give effect to such evidence, because appellant did not present them below to support an argument he belatedly asserts in his reply brief—namely, that the absence of a written performance evaluation created a triable issue of material fact. (*Doers v. Golden Gate Bridge Etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1.) "As a general rule, documents not before the trial court cannot be included as a part of the record on appeal. [Citation.] Although a reviewing court may take judicial notice of matters not before the trial court . . . , the reviewing court need not give effect to such evidence." (*Ibid.*) In any event, an employer who has asserted a facially valid and

specific basis for an employment termination has no additional burden to demonstrate the "objective fairness" of the employment termination procedures used. (*Loggins v. Kaiser Permanente Internat.* (2007) 151 Cal.App.4th 1102, 1111 [affirming grant of summary judgment].)

Finally, appellant also claims that respondents Lew and Tahmassian somehow committed perjury when they stated, in declarations supporting Tahmassian's motion to quash service of summons for lack of personal jurisdiction, that associate chancellor Tahmassian was not involved in the decision to terminate appellant, and it is not normal protocol to involve the associate vice chancellor of research in releasing a probationary radiation safety specialist. Appellant directs us to no evidence in the record to contradict those statements. Appellant stated in his declaration that during his second meeting with Eaton, Eaton told appellant that he had spoken with Tahmassian, who said he " 'thought the world' " of Lew. However, this is insufficient to show that Eaton shared appellant's specific safety concerns with Tahmassian, or that Tahmassian had anything to do with the subsequent decision to fire appellant.[3] It is true that respondents' counsel stated at the hearing on the summary judgment motion that "the way things are set up at UCSF, you cannot separate somebody during their probationary period without getting the approval [up] the chain of command. That is required for that to happen." Counsel did not state that Tahmassian (as opposed to Eaton, who acknowledged that he agreed to appellant's termination after the decision to fire him had been made) approved the decision. In any event, counsel's statements were not evidence.

Because respondents produced substantial evidence that appellant was fired for a legitimate, nondiscriminatory reason, and appellant provided insufficient evidence that

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3 Appellant claims in his reply brief that he asked Eaton if he had explained all his concerns to Tahmassian, that Eaton assured him that he had explained everything in detail, and that Eaton rejected appellant's suggestion that he meet with Tahmassian in person. Because appellant provides no citation to the record that would support these claims, or many of the other factual statements in his reply brief, we may treat them as waived. (*Nwosu v. Uba, supra,* 122 Cal.App.4th at p. 1246.)

his termination was in fact the result of retaliation, appellant failed to raise a triable issue of fact.

3. Reliance on *Palmer v. Regents of University of California*

Appellant also argues that the judgment must be reversed because the trial court improperly relied on *Palmer v. Regents of University of California*, *supra*, 107 Cal.App.4th 899 in its order granting summary judgment. *Palmer* held that a common law cause of action for discharge in violation of public policy under *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 was not properly asserted against the Regents. (*Palmer* at pp. 902, 909.) In their moving papers, respondents argued that, "[t]o the extent that" appellant was asserting a *Tameny* claim, the Regents was immune from such claims, as explained in *Palmer*. Appellant argued in his opposition that his claims were statutory, and respondents' counsel acknowledged at the hearing on the motion that *Palmer* thus did not apply, but that appellant's statutory claims failed in any event.

The trial court's order granting summary judgment, which was prepared by respondents' counsel, stated that respondent Regents was immune from liability pursuant to *Palmer*. Because the trial court's ruling on appellant's statutory claims was legally correct, we will not reverse the judgment merely because the trial court erred in its reliance on an inapposite case. (*People v. Smithey* (1999) 20 Cal.4th 936, 972 [legally correct ruling will not be reversed merely because trial court erred in its reasoning]; *Morgan*, *supra*, 88 Cal.App.4th at p. 67 [appellate court not bound by trial court's reasons or rationales].)

4. Statement of reasons

Appellant also claims that the trial court failed to comply with Code of Civil Procedure section 437c, subdivision (g), which provides that upon the grant of a motion for summary judgment on the ground that there is no triable issue of material fact, the trial court "shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists." In concluding that

there was no triable issue of fact that appellant's termination was the result of retaliation, the trial court stated that "the evidence is clear that his termination was based solely on legitimate performance issues and that there is no evidence that these reasons were pretextual." The trial court certainly could have pointed to more specific evidence to support its ruling, such as the feedback Lew received from appellant's coworkers, and Lew's personal observations that appellant wore protective gear in inappropriate settings and refused to attend various staff meetings.

Even assuming arguendo that the trial court's order did not sufficiently identify evidence in support of granting summary judgment, the failure to comply with Code of Civil Procedure section 437c, subdivision (g) is not automatically grounds for reversal. (*Unisys Corp. v. California Life & Health Ins. Guarantee Assn.* (1998) 63 Cal.App.4th 634, 640.) Any failure to state reasons for granting summary judgment is harmless where, as here, an appellate court's independent review reveals that the moving party was entitled to summary judgment because there was no evidence sufficient to raise a triable issue of fact. (*Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1146-1147.)

5. Oral evidentiary objections

We also reject appellant's argument that the judgment should be reversed because the trial court did not permit him to object to evidence at the hearing on respondents' motion for summary judgment. Appellant stated at the hearing: "About the contention that about [*sic*] Keith Cudaback, he—if you look at his declaration and the evidence that was presented and the evidence that comes with the—that I submitted with the complaint, the original evidence that came through the complaint, you see that he states that, first of all—well, actually, I should have—I wanted to object to some of their evidence. [¶] I can still do that?" The trial court responded, "No. That time is up for that. You should have done that sooner. Go ahead." Appellant thereafter briefly objected that respondent Cudaback's declaration contained hearsay, then proceeded to argue why Cudaback was liable even though he did not have the authority to fire appellant.

Appellant contends that the trial court erred in preventing him from making oral objections at the hearing. (Cf. Code Civ. Proc., § 437c, subd. (d) [objections made at hearing].) In his opening brief, he does not identify any *specific* evidentiary objection that he was prevented from making, let alone why the trial court should have ruled in his favor on such an objection. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [" 'The absence of cogent legal argument or citation to authority allows this court to treat [a] contention as waived' "].)

For the first time in his reply brief, appellant identifies specific evidentiary objections to respondents' evidence. "Points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (*Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.) Having failed to raise most of the specific objections with the trial court or in his opening brief, appellant has "doubly waived" the objections. (*Heiner v. Kmart Corp.* (2000) 84 Cal.App.4th 335, 351.)

In sum, the trial court did not err in granting summary judgment for respondents.

B. Motion to Disqualify.

Appellant also challenges the trial court's denial of his motion to disqualify the trial judge. At the start of the hearing on respondents' motion for summary judgment, appellant stated that he was making an oral motion for recusal of the trial judge, pursuant to Code of Civil Procedure section 170.6. Appellant stated that he had concluded, after reading the trial court's tentative ruling, that the judge was biased against him. The trial court denied the request as untimely, a ruling that appellant challenges on appeal.

The determination of the disqualification of a judge may be reviewed only by a writ of mandate, which is the exclusive method of obtaining review of a denial of a disqualification motion. (Code Civ. Proc., § 170.3, subd. (d); *People v. Hull* (1991) 1 Cal.4th 266, 269, 276.) Because appellant did not seek review by way of a writ petition, he forfeited his claim of error.

III.
DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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Sepulveda, J.*

We concur:

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Ruvolo, P.J.

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Reardon, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division 4, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.